

SENATE FLOOR SUBSTITUTE FOR  
SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 379

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTIONS OF THE OFF-HIGHWAY MOTOR VEHICLE ACT TO PROVIDE FOR REGULATION OF THE OPERATION OF OFF-HIGHWAY VEHICLES TO ENSURE THEIR SAFE AND RESPONSIBLE OPERATION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; PROVIDING PENALTIES; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-3-1001.1 NMSA 1978 (being Laws 2005, Chapter 325, Section 1) is amended to read:

"66-3-1001.1. DEFINITIONS.--As used in the Off-Highway Motor Vehicle Act:

A. "board" means the off-highway motor vehicle [safety] advisory board;

B. "department" means the department of game and

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1 fish;

2 ~~[B.]~~ C. "division" means the motor vehicle division  
3 of the taxation and revenue department;

4 ~~[C.]~~ D. "fund" means the trail safety fund;

5 ~~[D.]~~ E. "off-highway motor vehicle" means a motor  
6 vehicle designed by the manufacturer for operation exclusively  
7 off the highway or road and includes:

8 (1) "all-terrain vehicle", which means a motor  
9 vehicle fifty inches or less in width, having an unladen dry  
10 weight of one thousand pounds or less, traveling on three or  
11 more low-pressure tires and having a seat designed to be  
12 straddled by the operator and handlebar-type steering control;

13 (2) "off-highway motorcycle", which means a  
14 motor vehicle traveling on not more than two tires and having a  
15 seat designed to be straddled by the operator and that has  
16 handlebar-type steering control; ~~[E.]~~

17 (3) "snowmobile", which means a motor vehicle  
18 designed for travel on snow or ice and steered and supported in  
19 whole or in part by skis, belts, cleats, runners or low-  
20 pressure tires;

21 (4) "recreational off-highway vehicle", which  
22 means a motor vehicle designed for travel on four or more  
23 non-highway tires, for recreational use by one or more persons,  
24 and having:

25 (a) a steering wheel for steering

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1 control;

2 (b) non-straddle seating;

3 (c) maximum speed capability greater  
4 than thirty-five miles per hour;

5 (d) gross vehicle weight rating no  
6 greater than three thousand seven hundred fifty pounds;

7 (e) less than eighty inches in overall  
8 width, exclusive of accessories;

9 (f) engine displacement of less than one  
10 thousand cubic centimeters; and

11 (g) identification by means of a  
12 seventeen-character vehicle identification number; or

13 (5) by rule of the department, any other  
14 vehicles that may enter the market that fit the general profile  
15 of vehicles operated off the highway for recreational purposes;

16 ~~[E.]~~ F. "staging area" means a parking lot,  
17 trailhead or other location to or from which an off-highway  
18 motor vehicle is transported so that it may be placed into  
19 operation or removed from operation; and

20 ~~[F.]~~ G. "unpaved public roadway" means a dirt  
21 graveled street or road that is constructed, signed and  
22 maintained for regular passenger-car use by the general  
23 public."

24 Section 2. Section 66-3-1004 NMSA 1978 (being Laws 1978,  
25 Chapter 35, Section 200, as amended) is amended to read:

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1 "66-3-1004. REGISTRATION CERTIFICATE AND NONRESIDENT  
2 PERMIT FEES--RENEWAL--DISTRIBUTION OF FEES.--Fees shall be  
3 collected and distributed as follows:

4 A. the fees for registering an off-highway motor  
5 vehicle are:

6 (1) seventeen dollars (\$17.00) for each  
7 off-highway motor vehicle, of which five dollars (\$5.00) is  
8 appropriated to the division to defray the cost of making and  
9 issuing registration certificates, validating stickers and  
10 nonresident permits for off-highway motor vehicles. The  
11 remaining twelve dollars (\$12.00) shall be deposited in the  
12 motor vehicle suspense fund for distribution pursuant to  
13 Section 66-6-23 NMSA 1978; and

14 (2) an amount determined by rule of the  
15 [~~tourism~~] department not to exceed [~~thirty dollars (\$30.00)]~~  
16 forty dollars (\$40.00) for an off-highway user fee for each  
17 off-highway motor vehicle, which shall be distributed to the  
18 fund;

19 B. upon a change of ownership, the new owner shall  
20 make application and pay registration fees of:

21 (1) seventeen dollars (\$17.00) in the same  
22 manner as provided by rules of the division for original  
23 registration; and

24 (2) an amount determined by rule of the  
25 [~~tourism~~] department not to exceed [~~thirty dollars (\$30.00)]~~

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1 forty dollars (\$40.00) for an off-highway user fee for each  
2 off-highway motor vehicle, which shall be distributed to the  
3 fund;

4 C. the fees for a nonresident permit of an  
5 off-highway motor vehicle are either:

6 (1) seventeen dollars (\$17.00) for each  
7 off-highway motor vehicle that is not registered in another  
8 state; and

9 (2) an amount determined by rule of the  
10 [~~tourism~~] department not to exceed [~~thirty dollars (\$30.00)~~]  
11 forty dollars (\$40.00) for an off-highway user fee for each  
12 off-highway motor vehicle that is not currently in compliance  
13 with a similar off-highway user fee law or rule in another  
14 state, which shall be distributed to the fund; or

15 (3) seventeen dollars (\$17.00) for a  
16 ninety-day permit to include both the off-highway motor vehicle  
17 not otherwise registered and the off-highway user fee, of which  
18 five dollars (\$5.00) is appropriated to the division to defray  
19 the cost of making and issuing registration certificates,  
20 validating stickers and nonresident permits for off-highway  
21 motor vehicles. The remaining twelve dollars (\$12.00) shall be  
22 deposited in the motor vehicle suspense fund for distribution  
23 pursuant to Section 66-6-23 NMSA 1978;

24 D. except as provided in Paragraph (3) of  
25 Subsection C of this section, each registration certificate and

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1 nonresident permit shall be:

2 (1) good for two years after the month in  
3 which the off-highway motor vehicle is registered or the permit  
4 is issued; and

5 (2) renewed every two years;

6 E. the off-highway user fee for each off-highway  
7 motor vehicle shall be paid upon obtaining and renewing each  
8 registration certificate or nonresident permit;

9 F. duplicate registration certificates and  
10 nonresident permits shall be issued upon payment of a  
11 seven-dollar-fifty-cent (\$7.50) fee, which is appropriated to  
12 the division to defray the cost of making and issuing duplicate  
13 registration certificates and nonresident permits for off-  
14 highway motor vehicles;

15 G. a fee of one dollar (\$1.00) on registration  
16 certificates and nonresident permits shall be collected for the  
17 litter control and beautification fund; and

18 H. the ~~[tourism]~~ department, in conjunction with  
19 ~~[the division and the department of game and fish]~~ other  
20 agencies and departments, may establish and maintain sites to  
21 collect fees and issue permits for residents and nonresidents."

22 Section 3. Section 66-3-1010.1 NMSA 1978 (being Laws  
23 2005, Chapter 325, Section 9) is amended to read:

24 "66-3-1010.1. OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING  
25 ORGANIZATION--APPROVAL AND CERTIFICATION.--

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1           A. An off-highway motor vehicle safety training  
2 organization that offers and conducts an off-highway motor  
3 vehicle safety training course shall be approved and certified  
4 by the [~~board~~] department. Applicants for approval and  
5 certification shall submit an application to the [~~board~~]  
6 department for consideration.

7           B. The [~~board~~] department may approve and certify  
8 an organization that meets the minimum criteria established by  
9 the [~~board~~] department for an off-highway motor vehicle safety  
10 training organization. Each approval and certification shall  
11 be renewed annually."

12           Section 4. Section 66-3-1010.2 NMSA 1978 (being Laws  
13 2005, Chapter 325, Section 10) is amended to read:

14           "66-3-1010.2. OFF-HIGHWAY MOTOR VEHICLE SAFETY PERMIT--  
15 REQUIREMENTS--ISSUANCE.--A person under the age of eighteen  
16 shall be required to successfully complete an off-highway motor  
17 vehicle safety training course for which the person shall have  
18 parental permission. The course shall be conducted by an off-  
19 highway motor vehicle safety training organization that is  
20 approved and certified by the [~~board~~] department. Upon  
21 successful completion of the course, the person shall receive  
22 an off-highway motor vehicle safety permit issued by the  
23 organization."

24           Section 5. Section 66-3-1010.3 NMSA 1978 (being Laws  
25 2005, Chapter 325, Section 11) is amended to read:

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1 "66-3-1010.3. OPERATION AND EQUIPMENT--SAFETY  
2 REQUIREMENTS.--

3 A. A person shall not operate an off-highway motor  
4 vehicle:

5 (1) in a careless, reckless or negligent  
6 manner so as to endanger the person or property of another;

7 (2) while under the influence of intoxicating  
8 liquor or drugs as provided by Section 66-8-102 NMSA 1978;

9 (3) while in pursuit of and with intent to  
10 hunt or take a species of animal or bird protected by law  
11 unless otherwise authorized by the state game commission;

12 (4) in pursuit of or harassment of livestock  
13 in any manner that negatively affects the livestock's  
14 condition;

15 (5) on or within an earthen tank or other  
16 structure meant to water livestock or wildlife;

17 (6) in a manner that has a direct negative  
18 effect on or interferes with persons engaged in agricultural  
19 practices;

20 [~~4~~] (7) in excess of ten miles per hour  
21 within two hundred feet of a business, animal shelter,  
22 horseback rider, bicyclist, pedestrian, livestock or occupied  
23 dwelling, unless the person operates the vehicle on a closed  
24 course or track;

25 [~~5~~] (8) unless in possession of the person's

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1 registration certificate or nonresident permit;

2 [~~6~~] (9) unless the vehicle is equipped with  
3 a spark arrester approved by the United States forest service;  
4 provided that a snowmobile is exempt from this provision;

5 [~~7~~] (10) when conditions such as darkness  
6 limit visibility to five hundred feet or less, unless the  
7 vehicle is equipped with:

8 (a) one or more headlights of sufficient  
9 candlepower to light objects at a distance of one hundred fifty  
10 feet; and

11 (b) at least one taillight of sufficient  
12 intensity to exhibit a red or amber light at a distance of two  
13 hundred feet under normal atmospheric conditions; [~~or~~

14 ~~(8)~~] (11) that produces noise that exceeds  
15 ninety-six decibels when measured using test procedures  
16 established by the society of automotive engineers pursuant to  
17 standard J-1287; or

18 (12) where off-highway motor vehicle traffic  
19 is prohibited under local, state or federal rules or  
20 regulations.

21 B. A person under the age of eighteen shall not  
22 operate an off-highway motor vehicle:

23 (1) or ride upon an off-highway motor vehicle  
24 without wearing eye protection and a safety helmet that is  
25 securely fastened in a normal manner as headgear and that meets

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1 the standards established by the [board] department;

2 (2) without an off-highway motor vehicle  
3 safety permit; or

4 (3) while carrying a passenger.

5 C. A person under the age of eighteen but at least  
6 ten years of age shall not operate an off-highway motor vehicle  
7 unless the person is visually supervised at all times by a  
8 parent, legal guardian or a person over the age of eighteen who  
9 has a valid driver's license. This subsection shall not apply  
10 to a person who is at least:

11 (1) thirteen years of age and has a valid  
12 motorcycle license and off-highway motor vehicle safety permit;  
13 or

14 (2) fifteen years of age and has a valid  
15 driver's license, instructional permit or provisional license  
16 and off-highway motor vehicle safety permit.

17 D. A person under the age of ten shall not operate  
18 an off-highway motor vehicle unless:

19 (1) the all-terrain vehicle or recreational  
20 off-highway vehicle is an age-appropriate size-fit vehicle  
21 established by rule of the [board] department; and

22 (2) the person is visually supervised at all  
23 times by a parent, legal guardian or instructor of a safety  
24 training course certified by the [board] department.

25 ~~[E. The requirements of Subsections C and D of this~~

1 ~~section do not apply to a person who is part of an organized~~  
2 ~~tour under the guidance or direction of a guide certified by~~  
3 ~~the board.~~

4 F.] E. An off-highway motor vehicle [may] shall not  
5 be sold or offered for sale if the vehicle produces noise that  
6 exceeds ninety-six decibels when measured using test procedures  
7 established by the society of automotive engineers pursuant to  
8 standard J-1287. This subsection shall not apply to an off-  
9 highway motor vehicle that is sold or offered for sale only for  
10 organized competition."

11 Section 6. Section 66-3-1010.5 NMSA 1978 (being Laws  
12 2005, Chapter 325, Section 13) is amended to read:

13 "66-3-1010.5. REQUIREMENTS OF DEALERS TO DISTRIBUTE  
14 SAFETY INFORMATION.--A dealer selling off-highway motor  
15 vehicles shall distribute information [~~recommended~~] provided by  
16 the [~~board~~] department to off-highway motor vehicle purchasers  
17 on state laws, environmental and cultural considerations,  
18 customs, safety requirements, training programs, operating  
19 characteristics and potential risk of injury associated with  
20 off-highway motor vehicles."

21 Section 7. Section 66-3-1011 NMSA 1978 (being Laws 1975,  
22 Chapter 240, Section 11, as amended) is amended to read:

23 "66-3-1011. OPERATION ON STREETS OR HIGHWAYS--PROHIBITED  
24 AREAS.--

25 A. A person shall not operate an off-highway motor

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1 vehicle on any:

2 (1) limited access highway or freeway at any  
3 time; or

4 (2) any paved street or highway except as  
5 provided in Subsection B of this section.

6 B. Off-highway motor vehicles may cross streets or  
7 highways, except limited access highways or freeways, if the  
8 crossings are made after coming to a complete stop prior to  
9 entering the roadway. Off-highway motor vehicles shall yield  
10 the right of way to oncoming traffic and shall begin a crossing  
11 only when it can be executed safely and then cross in the most  
12 direct manner as close to a perpendicular angle as possible.

13 C. A person shall not operate an off-highway motor  
14 vehicle on state game commission-owned, -controlled or  
15 -administered land except as specifically allowed pursuant to  
16 Chapter 17, Article 6 NMSA 1978.

17 D. A person shall not operate an off-highway motor  
18 vehicle on land owned, controlled or administered by the state  
19 parks division of the energy, minerals and natural resources  
20 department, pursuant to Chapter 16, Article 2 NMSA 1978, except  
21 in areas designated by and permitted by rules adopted by the  
22 secretary of energy, minerals and natural resources.

23 E. Unless authorized, a person shall not:

24 (1) remove, deface or destroy any official  
25 sign installed by a state, federal, local or private land

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1 management agency; or

2 (2) install any off-highway motor vehicle-  
3 related sign."

4 Section 8. Section 66-3-1015 NMSA 1978 (being Laws 1978,  
5 Chapter 35, Section 211, as amended) is amended to read:

6 "66-3-1015. ENFORCEMENT.--A wildlife conservation  
7 officer, state police officer or peace officer of this state or  
8 any of its political subdivisions, upon displaying the  
9 officer's badge of office, has the authority to enforce the  
10 provisions of the Off-Highway Motor Vehicle Act and may:

11 A. require an off-highway motor vehicle operator to  
12 produce:

13 (1) the registration certificate or  
14 nonresident permit;

15 (2) proof of successful completion of an off-  
16 highway motor vehicle training course conducted by an off-  
17 highway safety training organization approved and certified by  
18 the ~~[board]~~ department, when required by Section ~~[10 of this~~  
19 ~~2005 act]~~ 66-3-1010.2 NMSA 1978; and

20 (3) the personal identification of the  
21 operator; and

22 B. issue citations for violations of the provisions  
23 of the Off-Highway Motor Vehicle Act."

24 Section 9. Section 66-3-1017 NMSA 1978 (being Laws 2005,  
25 Chapter 325, Section 19) is amended to read:

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1 "66-3-1017. OFF-HIGHWAY MOTOR VEHICLE [SAFETY] ADVISORY  
2 BOARD CREATED--MEMBERS--COMPENSATION.--

3 [A. ~~The "off-highway motor vehicle safety board" is~~  
4 ~~created. The board consists of the following nine ex-officio~~  
5 ~~members or their designees and seventeen appointed members:~~

6 (1) ~~the director of the department of game and~~  
7 ~~fish;~~

8 (2) ~~the director of the motor vehicle~~  
9 ~~division;~~

10 (3) ~~the secretary of transportation;~~

11 (4) ~~the secretary of public safety;~~

12 (5) ~~the commissioner of public lands;~~

13 (6) ~~the secretary of energy, minerals and~~  
14 ~~natural resources;~~

15 (7) ~~the secretary of tourism;~~

16 (8) ~~the secretary of health;~~

17 (9) ~~the director of the state parks division~~  
18 ~~of the energy, minerals and natural resources department;~~

19 (10) ~~one member of the New Mexico department~~  
20 ~~of agriculture appointed by the board of regents of New Mexico~~  
21 ~~state university;~~

22 (11) ~~one representative from each of the~~  
23 ~~state's six tourism regions with expertise in off-highway motor~~  
24 ~~vehicle safety or motorized and non-motorized recreation, two~~  
25 ~~of whom are appointed by the secretary of health, two of whom~~

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1 ~~are appointed by the secretary of tourism and two of whom are~~  
2 ~~appointed by the secretary of energy, minerals and natural~~  
3 ~~resources, to include at least one member of:~~

4 ~~(a) a recognized off-highway motorcycle~~  
5 ~~user group;~~

6 ~~(b) an all-terrain vehicle user group;~~  
7 ~~and~~

8 ~~(c) a snowmobile user group;~~

9 ~~(12) three representatives from local law~~  
10 ~~enforcement agencies appointed by the secretary of public~~  
11 ~~safety;~~

12 ~~(13) two representatives from a conservation~~  
13 ~~or environmental organization appointed by the secretary of~~  
14 ~~energy, minerals and natural resources;~~

15 ~~(14) two off-highway motor vehicle dealers~~  
16 ~~appointed by the secretary of tourism;~~

17 ~~(15) one health professional with expertise in~~  
18 ~~injury prevention or treatment appointed by the secretary of~~  
19 ~~health;~~

20 ~~(16) one representative from the United States~~  
21 ~~bureau of land management appointed by the governor; and~~

22 ~~(17) one representative from the United States~~  
23 ~~forest service appointed by the governor.~~

24 ~~B. The board shall select a chairperson, a vice~~  
25 ~~chairperson and other officers as it deems necessary.~~

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1           ~~C. The board shall meet at the call of the~~  
2           ~~chairperson but not less than twice annually. A majority of~~  
3           ~~members constitutes a quorum for the transaction of business.~~  
4           ~~The affirmative vote of at least a majority of the quorum~~  
5           ~~present shall be necessary for an action to be taken by the~~  
6           ~~board.~~

7           ~~D. Members shall be appointed to staggered terms of~~  
8           ~~two years each; provided that no more than nine terms expire in~~  
9           ~~any one year. The ex-officio board members shall select by lot~~  
10          ~~nine appointed members to serve initial terms of three years~~  
11          ~~each. A vacancy shall be filled by appointment by the original~~  
12          ~~appointing authority for the remainder of the unexpired term.~~

13          ~~E. Appointed members, except for representatives of~~  
14          ~~federal agencies, of the board are entitled to reimbursement~~  
15          ~~for attending meetings of the board as provided for nonsalaried~~  
16          ~~officers in the Per Diem and Mileage Act and shall receive no~~  
17          ~~other compensation, perquisite or allowance.]~~

18                 A. The "off-highway motor vehicle advisory board"  
19                 is created to advise the department on matters related to  
20                 administration of the Off-Highway Motor Vehicle Act. The board  
21                 shall consist of the following seven members appointed by the  
22                 governor:

23                         (1) one landowner living near a national  
24                         forest or bureau of land management property that is used  
25                         extensively for recreational off-highway vehicle activity;

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1                   (2) one producer or one grazing permittee on  
2 public lands from the farming or livestock industry;

3                   (3) one person from the off-highway motor  
4 vehicle industry;

5                   (4) one off-highway motor vehicle user;

6                   (5) one hunter or angler;

7                   (6) one quiet recreationalist, such as a  
8 hiker, backpacker, birdwatcher, equestrian, mountain biker,  
9 rock climber or archaeological enthusiast; and

10                  (7) one member with expertise in injury  
11 prevention or treatment.

12                  B. The board shall select a chair and a vice chair.

13                  C. The board shall meet at the call of the chair  
14 but not less than twice annually.

15                  D. Members shall be appointed to staggered terms of  
16 two years each; provided that no more than four terms expire in  
17 any one year. The board members shall select by lot four  
18 members to serve initial terms of three years each. A vacancy  
19 shall be filled by appointment of the governor for the  
20 remainder of the unexpired term. Members of the board shall be  
21 entitled to reimbursement pursuant to the Per Diem and Mileage  
22 Act."

23                  Section 10. Section 66-3-1018 NMSA 1978 (being Laws 2005,  
24 Chapter 325, Section 20) is amended to read:

25                  "66-3-1018. [~~BOARD~~] DEPARTMENT--POWERS AND DUTIES.--

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1           A. The [~~board may~~] department shall cooperate with  
2 appropriate federal agencies, public and private organizations  
3 and corporations and local government units to implement the  
4 provisions of the Off-Highway Motor Vehicle Act.

5           B. The [~~board shall~~] department:

6                   (1) shall accept and evaluate all applications  
7 for approval and certification of an off-highway motor vehicle  
8 safety training organization and approve and certify those that  
9 meet the minimum criteria;

10                   (2) shall notify the division of the off-  
11 highway motor vehicle safety training organizations that have  
12 received approval and certification;

13                   (3) shall establish and revise as appropriate  
14 minimum criteria [~~by January 1, 2007~~] to approve and certify an  
15 off-highway motor vehicle safety training organization. The  
16 criteria shall include requirements for curriculum and  
17 materials for:

18                           (a) training instructors to teach  
19 off-highway motor vehicle safety;

20                           (b) training the public about  
21 off-highway motor vehicle safety and age-appropriate size-fit  
22 use of off-highway motor vehicles; and

23                           (c) teaching responsible use of  
24 off-highway motor vehicles with respect to environmental  
25 considerations, private property restrictions, agricultural and

1 rural lifestyles and cultural considerations, off-highway motor  
2 vehicle operating laws and prohibitions against operating off-  
3 highway motor vehicles under the influence of alcohol or drugs;

4 (4) shall implement [~~by January 1, 2007~~] a  
5 state off-highway motor vehicle safety training and  
6 certification program;

7 (5) shall adopt and promulgate rules regarding  
8 the:

9 (a) age-appropriate size-fit use of all-  
10 terrain vehicles or recreational off-highway motor vehicles;

11 (b) acceptance or accreditation of  
12 instruction or safety courses provided by other states; and

13 (c) standards covering the  
14 specifications of eye protection and safety helmets;

15 (6) may recommend, with public participation  
16 and input, off-highway motor vehicle park, facility and trail  
17 locations to the state, county, tribal or local governing body  
18 or private entity that owns or administers the land upon which  
19 the park, facility or trail is located. The [~~board~~] department  
20 shall establish criteria to recommend locations that include  
21 consideration of off-highway motor vehicle operating laws and  
22 effects on:

23 (a) wildlife and the environment;

24 (b) adjacent state, county, federal,  
25 tribal and private property;

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1 (c) other recreational and  
2 nonrecreational uses on the same or adjacent lands; and

3 (d) archaeological, cultural and  
4 historic resources and customs;

5 (7) shall recommend restoration or, if deemed  
6 necessary, closure of off-highway motor vehicle tracks or  
7 trails to the state, county, tribal or local governing body or  
8 private entity that owns or administers the land upon which the  
9 tracks or trails are located if they pose significant or  
10 irreversible environmental damage, a danger to users or a  
11 public nuisance as determined by the ~~[board]~~ department. The  
12 ~~[board]~~ department shall consider the construction of  
13 alternative tracks or trails as part of the closure process;

14 (8) shall accept and evaluate all applications  
15 for grants from the fund ~~[and make recommendations to the~~  
16 ~~tourism department]~~ for implementation of the provisions of the  
17 Off-Highway Motor Vehicle Act. The ~~[board]~~ department shall  
18 establish criteria for grants from the fund that include  
19 consideration of the:

20 (a) applicant's financial and legal  
21 status;

22 (b) applicant's management plan,  
23 including specific measures to avoid or minimize environmental  
24 damage to public and private lands and danger to users and  
25 spectators;

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1 (c) operating budget for the park,  
2 trail, facility or staging area;

3 (d) availability of matching funds; and

4 (e) public participation and input;

5 [~~and~~]

6 (9) shall certify tour guides;

7 (10) shall prepare a management plan that  
8 accomplishes the purposes of the Off-Highway Motor Vehicle Act  
9 in a cost-effective manner and relies on existing agencies'  
10 available funding with specific qualifications for program  
11 implementation, which shall include joint powers agreements  
12 with the department of public safety and other law enforcement  
13 agencies for law enforcement and other agencies as appropriate  
14 for carrying out the provisions of the Off-Highway Motor  
15 Vehicle Act;

16 (11) shall develop and implement an overall  
17 enforcement strategy for the entire state that includes:

18 (a) cooperation with federal, state and  
19 local law enforcement agencies to provide training and  
20 educational materials related to off-highway motor vehicle use;

21 (b) coordination efforts related to  
22 off-highway motor vehicle use with participating law  
23 enforcement agencies;

24 (c) developing strategies for addressing  
25 and mininizing impacts on farmers and ranchers in rural

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1 agricultural areas, on hunters and anglers and on non-motorized  
2 recreationalists by off-highway motor vehicle use; and

3 (d) using law enforcement DUI-type  
4 "blitzes" in heavily used areas, staging areas or other problem  
5 areas;

6 (12) shall develop and implement an overall  
7 educational strategy for the entire state that:

8 (a) incorporates materials developed by  
9 the United States department of agriculture forest service  
10 program that teaches trail etiquette and respect for natural  
11 resources;

12 (b) includes the development of New  
13 Mexico-specific written, video or other educational materials  
14 and educational programs that address the impact of off-highway  
15 motor vehicles on traditional living culture, agricultural land  
16 and private property; and

17 (c) includes the development and  
18 maintenance of a web site containing rules and regulations,  
19 safety information and educational material relating to  
20 resource protection and the impact of off-highway motor  
21 vehicles on traditional living culture, agricultural land and  
22 historical sites;

23 (13) shall develop an overall strategy for  
24 phased implementation of an information system to track  
25 information, such as use patterns, injury data, ecological

1 data, natural resource data and data relating to the impact of  
2 off-highway motor vehicles on traditional living culture and on  
3 agricultural land. The strategy shall include:

4 (a) identification and implementation of  
5 appropriate data collecting mechanisms, such as a toll-free  
6 number or a web-based data collecting process; and

7 (b) development of an information system  
8 program capable of interfacing with existing government and  
9 private databases or other information systems;

10 (14) may implement noise enforcement by the  
11 testing of sound levels of off-highway motor vehicles at the  
12 time of registration and equip law enforcement officers with  
13 sound meters for field testing of sound levels;

14 (15) may contract with government or quasi-  
15 government agencies to conduct analysis of the impact of  
16 off-highway motor vehicle use on forests, rangeland and other  
17 natural resources and use the data obtained to make  
18 recommendations to the appropriate land management agency;

19 (16) shall review the definition of  
20 "off-highway motor vehicle" as needed to include new classes of  
21 off-highway motor vehicles as they become available in the  
22 marketplace;

23 (17) shall, in cooperation with the division,  
24 determine the size, composition, attachment mechanism, letter  
25 or number height and other properties of off-highway motor

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1 vehicle identification. This identification may be a  
2 traditional license plate, stick-on lettering as used for boat  
3 identification or another form of identification that is  
4 visible and readable;

5 (18) shall present its semiannual plans and  
6 progress to the advisory board for the board's input and  
7 response; and

8 (19) may collaborate with the appropriate land  
9 agencies to develop criteria for signage relating to off-road  
10 motor vehicle use, including the size, visibility, graphics and  
11 frequency of signage."

12 Section 11. Section 66-3-1019 NMSA 1978 (being Laws 2005,  
13 Chapter 325, Section 21) is amended to read:

14 "66-3-1019. FUND CREATED--DISPOSITION.--

15 A. The "trail safety fund" is created in the state  
16 treasury. The fund is a nonreverting fund and consists of  
17 revenues from off-highway motor vehicle registration and user  
18 fees, grants and donations. No more than thirty percent of the  
19 fund may be used for administrative overhead, and at least  
20 fifty percent shall be devoted to law enforcement and  
21 education. Income from investment of the fund shall be  
22 credited to the fund. The fund shall be administered by the  
23 [~~tourism~~] department, and money in the fund is appropriated to  
24 the [~~tourism~~] department to carry out the purposes of the Off-  
25 Highway Motor Vehicle Act. Expenditures from the fund shall be

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1 by warrant of the secretary of finance and administration upon  
2 vouchers signed by the [~~secretary of tourism or the~~  
3 ~~secretary's~~] director of the department of game and fish or the  
4 director's authorized representative.

5 ~~[B. The tourism department, upon recommendation by~~  
6 ~~the board, shall make distributions from the fund to develop~~  
7 ~~and maintain trails, build and maintain staging areas, market~~  
8 ~~safety programs and promote safety for off-highway motor~~  
9 ~~vehicles.]~~

10 B. The department shall make annual distributions  
11 from the fund for the following purposes:

- 12 (1) administrative;
- 13 (2) law enforcement;
- 14 (3) education and training;
- 15 (4) information system development and  
16 management;
- 17 (5) resource monitoring and protection and  
18 trail building, maintenance and restoration; and
- 19 (6) implementation of other provisions of the  
20 Off-Highway Motor Vehicle Act."

21 Section 12. Section 66-3-1020 NMSA 1978 (being Laws 2005,  
22 Chapter 325, Section 22) is amended to read:

23 "66-3-1020. PENALTIES.--

24 A. [~~Unless the violation is declared a felony, a~~  
25 ~~petty misdemeanor or a citation under the Motor Vehicle Code] A~~

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1 person who violates the provisions of the Off-Highway Motor  
2 Vehicle Act is guilty of a penalty assessment misdemeanor  
3 [~~pursuant to Section 66-8-7 NMSA 1978~~]. A parent, guardian or  
4 custodian who causes or knowingly permits a child under the age  
5 of eighteen years to operate an off-highway motor vehicle in  
6 violation of the provisions of the Off-Highway Motor Vehicle  
7 Act is in violation of that act and subject to the same penalty  
8 as the child operating the off-highway motor vehicle in  
9 violation of that act.

10 B. [~~When a person is convicted of a felony or~~  
11 ~~misdemeanor committed while operating an off-highway motor~~  
12 ~~vehicle, the court may order the person to complete a~~  
13 ~~board-certified safety training course~~] As used in the Off-  
14 Highway Motor Vehicle Act, "penalty assessment misdemeanor"  
15 means violation of any provision of the Off-Highway Motor  
16 Vehicle Act for which a violator may be subject to the  
17 following:

<u>CLASS 1 VIOLATIONS</u>	<u>SECTION</u>	<u>PENALTY</u>
	<u>VIOLATED</u>	<u>ASSESSMENT</u>
<u>failure to possess a</u>		
<u>registration certificate</u>		
<u>or nonresident permit</u>	<u>66-3-1010.3</u>	<u>\$10.00</u>
<u>violations involving</u>		
<u>headlights or taillights</u>	<u>66-3-1010.3</u>	<u>10.00</u>
<u>failure to possess an off-</u>		

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1	<u>highway motor vehicle</u>		
2	<u>safety permit</u>	<u>66-3-1010.3</u>	<u>10.00</u>
3	<u>selling a vehicle that produces</u>		
4	<u>noise in excess of ninety-six</u>		
5	<u>decibels</u>	<u>66-3-1010.3</u>	<u>10.00</u>
6	<u>any violation of the Off-Highway</u>		
7	<u>Motor Vehicle Act not otherwise</u>		
8	<u>specifically defined elsewhere</u>		
9	<u>in this section</u>	<u>66-3-1010.3</u>	<u>10.00</u>
10	<u>CLASS 2 VIOLATIONS</u>	<u>SECTION</u>	<u>PENALTY</u>
11		<u>VIOLATED</u>	<u>ASSESSMENT</u>
12	<u>failure to complete a required</u>		
13	<u>off-highway motor vehicle</u>		
14	<u>safety training course</u>	<u>66-3-1010.2</u>	<u>\$50.00</u>
15	<u>operating a vehicle in excess</u>		
16	<u>of ten miles per hour within</u>		
17	<u>two hundred feet of a business,</u>		
18	<u>animal shelter, horseback</u>		
19	<u>rider, bicyclist, pedestrian,</u>		
20	<u>livestock or occupied</u>		
21	<u>dwelling</u>	<u>66-3-1010.3</u>	<u>50.00</u>
22	<u>a person under the age of</u>		
23	<u>eighteen but at least</u>		
24	<u>fifteen years of age who</u>		
25	<u>operates an off-highway</u>		

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1	<u>motor vehicle in violation</u>		
2	<u>of the supervision requirements</u>		
3	<u>of the Off-Highway Motor</u>		
4	<u>Vehicle Act</u>	<u>66-3-1010.3</u>	<u>50.00</u>
5	<u>operating an off-highway motor</u>		
6	<u>vehicle that produces noise</u>		
7	<u>that exceeds ninety-six</u>		
8	<u>decibels</u>	<u>66-3-1010.3</u>	<u>50.00</u>
9	<u>unauthorized installation,</u>		
10	<u>removal, destruction or</u>		
11	<u>defacing of a motor</u>		
12	<u>vehicle sign</u>	<u>66-3-1011</u>	<u>50.00</u>
13	<u>CLASS 3 VIOLATIONS</u>	<u>SECTION</u>	<u>PENALTY</u>
14		<u>VIOLATED</u>	<u>ASSESSMENT</u>
15	<u>operating a vehicle that is</u>		
16	<u>not equipped with an approved</u>		
17	<u>spark arrester</u>	<u>66-3-1010.3</u>	<u>\$100.00</u>
18	<u>operating an off-highway</u>		
19	<u>motor vehicle while in</u>		
20	<u>pursuit of and with</u>		
21	<u>intent to hunt or take</u>		
22	<u>a species of animal or bird</u>		
23	<u>protected by law, unless</u>		
24	<u>otherwise authorized by</u>		
25	<u>the state game commission</u>	<u>66-3-1010.3</u>	<u>100.00</u>

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1 operating an off-highway  
 2 motor vehicle in pursuit of  
 3 or harassment of livestock  
 4 in any manner that negatively  
 5 affects the livestock's  
 6 condition 66-3-1010.3 100.00

7 operating an off-highway  
 8 motor vehicle on or within  
 9 an earthen tank or other  
 10 structure meant to water  
 11 livestock or wildlife 66-3-1010.3 100.00

12 operating a motor vehicle  
 13 in a manner that has a  
 14 direct negative effect on  
 15 or interferes with persons  
 16 engaged in agricultural  
 17 practices 66-3-1010.3 100.00

18 a person under the age of  
 19 eighteen operating an  
 20 off-highway motor vehicle  
 21 without wearing eye  
 22 protection and a safety  
 23 helmet 66-3-1010.3 100.00

24 a person under the age of  
 25 eighteen operating an

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1	<u>off-highway motor vehicle</u>		
2	<u>while carrying a passenger</u>	<u>66-3-1010.3</u>	<u>100.00</u>
3	<u>a person under the age of</u>		
4	<u>fifteen but at least ten</u>		
5	<u>years of age who operates</u>		
6	<u>an off-highway motor vehicle</u>		
7	<u>in violation of the supervision</u>		
8	<u>requirements of the Off-Highway</u>		
9	<u>Motor Vehicle Act</u>	<u>66-3-1010.3</u>	<u>100.00</u>
10	<u>a person under the age of</u>		
11	<u>ten operating an all-terrain</u>		
12	<u>vehicle or recreational off-highway</u>		
13	<u>motor vehicle that is not an</u>		
14	<u>age-appropriate size-fit or</u>		
15	<u>who operates an off-highway</u>		
16	<u>motor vehicle in violation</u>		
17	<u>of the supervision requirements</u>		
18	<u>of this section</u>	<u>66-3-1010.3</u>	<u>100.00</u>
19	<u>CLASS 4 VIOLATIONS</u>	<u>SECTION</u>	<u>PENALTY</u>
20		<u>VIOLATED</u>	<u>ASSESSMENT</u>
21	<u>operating an off-highway</u>		
22	<u>motor vehicle in a</u>		
23	<u>careless, reckless or</u>		
24	<u>negligent manner so as</u>		
25	<u>to endanger the person</u>		

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1        or property of another                    66-3-1010.3                    \$200.00  
2        operating an off-highway  
3        motor vehicle on any road  
4        or area closed to off-  
5        highway motor vehicle  
6        traffic under local, state  
7        or federal regulations                    66-3-1010.3                    200.00  
8        operating an off-highway  
9        motor vehicle on a  
10       limited-access highway  
11       or freeway.                                    66-3-1011                    200.00.

12                    C. The penalty for second, third and subsequent  
13        violations within a three-year time period shall be increased  
14        as follows:

15                    (1) a second violation in a class 1 penalty  
16        category involving failure to possess a registration  
17        certificate or nonresident permit shall be increased to a class  
18        2 penalty category;

19                    (2) any class 2 or class 3 violation for a  
20        second or greater infraction within a three-year period shall  
21        be increased to the next-highest penalty assessment category;  
22        and

23                    (3) each subsequent violation in a class 4  
24        penalty category will result in an additional penalty of two  
25        hundred dollars (\$200).

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1           D. Multiple violations for the same incident shall  
2 be treated as a single event and shall not result in graduated  
3 penalties.

4           E. The term "penalty assessment misdemeanor" does  
5 not include a violation that has caused or contributed to the  
6 cause of an accident resulting in injury or death to a person.

7           F. When an alleged violator of a penalty assessment  
8 misdemeanor elects to accept a notice to appear in lieu of a  
9 notice of penalty assessment, a fine imposed upon later  
10 conviction shall not exceed the penalty assessment established  
11 for the particular penalty assessment misdemeanor, and  
12 probation imposed upon a suspended or deferred sentence shall  
13 not exceed ninety days."

14           Section 13. A new section of the Off-Highway Motor  
15 Vehicle Act is enacted to read:

16           "[NEW MATERIAL] LEGISLATIVE OVERSIGHT.--In addition to  
17 reporting to the legislative finance committee pursuant to the  
18 performance review and budgeting process, the department shall  
19 report to the appropriate interim committee appointed by the  
20 New Mexico legislative council on the status of implementation  
21 of the Off-Highway Motor Vehicle Act. The department shall  
22 report to the appropriate committee of the legislature on the  
23 status of existing and proposed rules and relevant enforcement  
24 issues."

25           Section 14. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,  
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1 PROPERTY, CONTRACTS, RECORDS AND APPROPRIATIONS.--On July 1,  
2 2009, all records, personnel, appropriations, money, equipment,  
3 supplies and other property of the tourism department pursuant  
4 to administration and enforcement of the Off-Highway Motor  
5 Vehicle Act shall be transferred to the department of game and  
6 fish and all contracts pursuant to the Off-Highway Motor  
7 Vehicle Act shall be binding and effective on the department of  
8 game and fish.

9 Section 15. REPEAL.--Sections 66-3-1004.1 and 66-3-1016  
10 NMSA 1978 (being Laws 2005, Chapter 325, Section 4 and Laws  
11 1978, Chapter 35, Section 212, as amended) are repealed.

12 Section 16. EMERGENCY.--It is necessary for the public  
13 peace, health and safety that this act take effect immediately.

underscoring material = new  
~~[bracketed material]~~ = delete